IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:- 02.02.2007

Coram:-

The Hon'ble Mr. Justice P.SATHASIVAM
and
The Hon'ble Mr. Justice N.PAUL VASANTHAKUMAR

Writ Appeal No.1577 of 2002

Madurai Saurashtra Sabha
rep. by its Honorary Secretary
R.V.Seshachary
Madurai ... Appellant/Petitioner.

vs.

1. The State of Tamilnadu rep.
by its Secretary to Govt.,
Religious Charitable
Endowments, Madras.

2. The Commissioner, HR & CE
(Admn.) Department,
Madras - 34.

3. The Deputy Commissioner,
HR & CE (Admn.),
Madurai. ... Respondents/Respondents.

Appeal against the order of this Court dated 28.11.2000 made in W.P. No.20762 of 1993 presented under Article 226 of the constitution of India, praying this Court to issue Writ of Certiorarified Mandamus calling for the records of the 3rd respondent - Deputy Commissioner HR and CE Madurai connected with Na.Ka.No.5068/93-A1, dated 13.9.193 and quash the Notice dated 13.9.93 and direct the respondents to forbear from interfering with the affairs of the Petitioner Sabha by applying Chapter VIII and IX of the Hindu Religious and Charitable Endowments Act or in any other way.

For Appellant : Mr.R.Subramanian

For Respondents : Mr.T.Chandrasekaran,
Special Government Pleader.
[HR and CE].

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(Judgment of the Court, delivered by P.SATHASIVAM, J.)

Aggrieved by the order of the learned single Judge, dated 28.11.2000, made in W.P. No.20762 of 1993, Madurai Sourashtra Sabha through its Honorary Secretary has filed the above Appeal.

2. For convenience, we shall refer the parties as arrayed before the learned single Judge.

3. According to the petitioner, Madurai Sourashtra Sabha, which consists of members belonging only to Sourashtra community, is being administered for the objects of managing educational institutions, reading rooms and library enabling the members of the community to receive general and technical education. The said Sabha is also managing a Temple known as Madurai Sri Prasanna Venkatesa Perumal Temple (in short 'Temple') and conducting the religious festivals connected therewith. All the accounts of the Sabha relating to income and expenditure of the Temple, which has no independent income, are being periodically audited and reports are submitted to the authorities functioning under the Indian Companies Act for their satisfaction. That being so, the authorities functioning under the Hindu Religious and Charitable Endowments Act (HR&CE Act) raised a dispute with regard to the character of the Temple, claiming that it is a 'Public Temple'. The said dispute had been finally decided in the Judgment of this Court dated, 31.07.1970 rendered in A.S. No.645 of 1963 (also reported in 1984 Law Weekly Page 86 [Rajagopalier v. Commr., H.R. & C.E.]), declaring that the Temple is a 'denominational Temple' within the meaning of Article 26 of the Constitution of India and that the Sabha, constituted by members of the Sourashtra Community for the object of maintaining the Temple of denominational nature or character, has rights to administer and govern its properties in accordance with the statutory law of their choice. Without taking note of the legal position, the authorities functioning under the Act, have been calling upon the petitioner to submit accounts of the Temple for being audited by them and also to pay the audit fees and other contributions. The Deputy Commissioner, HR&CE, Madurai, by notice dated 23.08.1983, called upon the petitioner to attend enquiry on 06.09.1993 in respect of the administration of the Temple. To the said Notice, a reply dated 06.09.1993 had been sent, making it clear that the authorities functioning under the Hindu Religious and Charitable Endowments are not justified in issuing such notice as they have no power to audit the accounts maintained by the Sabha relating to the Temple. On receipt of their Reply, another notice dated 13.09.1993 came to be issued by the Deputy Commissioner, HR & CE, Madurai, calling upon the Secretary of the Sabha to be present on 27.09.1993 in his office along with the accounts and other records for enquiry. Again, a similar notice was issued by the same authority to produce the records for being audited. The stand taken by the authorities is bad and illegal and opposed to law and it would affect the right of the people belonging to sourashtra community. With the above averments, the

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petitioner Sabha prayed for quashing of the notice dated 13.09.1993 and to forbear the respondents from interfering with the affairs of the Sabha by applying Chapter VIII and IX of the Act.

4. On behalf of the respondents, Deputy Secretary to Government, Commercial Taxes and Religious Endowments Department, filed a counter affidavit, wherein, it is stated that the petitioner is not entitled to challenge the notice. The judgement of this Court in A.S. No.645 of 1963 makes it clear that the Temple is a denominational temple within the meaning of Article 26 of the Constitution of India and that its properties would be regulated by the provisions of the HR&CE Act. Only based on the said Judgment, notice was issued by the Deputy Commissioner for enquiry. Further, several complaints had been received from the public including the one from the Secretary, Hindu Temple Protection Committee, Madurai, dated 03.10.1988, complaining mal-administration of the Temple by the Sabha; in those circumstances, the petitioner was directed to produce the accounts for auditing and verification. Issuance of the impugned notice is well within the powers of the Department.

5. The learned single Judge, by order dated 28.11.2000, accepting the stand of the HR&CE Department, refused to interfere with the impugned notice and dismissed the Writ Petition; hence, the present Writ Appeal.

6. Heard Mr.R.Subramanian, learned counsel for the appellant, and Mr.T.Chandrasekaran, learned Special Government Pleader for the respondents.

7. The only point for consideration is as to whether the respondents-authorities under the HR&CE Act are entitled to verify and enquire into the affairs of the Temple in question, which has denominational character.

8. Inasmuch as the Division Bench decision of this Court reported in 1984 Law Weekly 86 (A.S. No.645 of 1963) is very much relevant to answer the issue involved here, before proceeding further, let us highlight the background in which the Appeal Suit came to be filed and also the findings rendered by the Division Bench therein. The very same petitioner Sabha instituted a suit for declaration that the Temple in question is not a Temple as defined in the Madras Hindu Religious and Charitable Endowments (Act 22 of 1959) and to set aside the order of the Commissioner, HR&CE Department, dated 03.11.1961. It was contended by the Commissioner, HR&CE - defendant in the suit, that the Temple in question was a Temple as defined under Section 6(2) of the Act of 1959. The learned trial Judge had upheld the defendant's claim. Aggrieved by the same, the Sabha filed Appeal in A.S. No.645 of 1963 before this Court. The following conclusion of the Division Bench is relevant,

> " Before parting with this case, it is necessary to make some observations touching the discretion and the

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caution to be exercised by the commissioner and the authorities while exercising control and supervision over the suit temple under the provisions of the Hindu Religious and Charitable Endowments Act. That the suit temple is a denominational temple and not a public temple in the wide sense of the term should always be borne in mind by them. From the decisions referred to above, it will be clear that some of the provisions of the Act will not in the nature of things apply to denominational temples. At the same time, we should not be understood as in any manner denying the power of control and supervision of the Commissioner and the authorities functioning under the Act. The authorities have so far acted on the general basis that the suit temple is a temple as defined under Section 6(2) of the Act, not taking note of the aspect that the temple is a denominational one. It is not our desire to expatiate at length and specify or demarcate in what manner the powers under the particular provisions should be exercised in supervising the management of the temple and its affairs. We have no doubt that the authorities will be mainly guided by the spirit underlying the establishment and existence of such denominational temples.

The suit temple was founded and has throughout been maintained and all its expenses are met out of voluntary generous contribution and liberal donations made by members of the Sourashtra Community and in particular the members of the Sourashtra Sabha who are rich and highly respectable persons in the locality. They have been uniformly contributing liberally to the upkeep and maintenance of the temple, the performance of the worship and the celebration of the festivals. There is no contribution from the public. The members of the Sourashtra Sabha have been very well managing the affairs of the temple all throughout without giving any occasion for complaint; till now there has been no complaint of any mismanagement whatsoever. They are maintaining regular accounts. The committee is meeting as often as required and the committee scrutinises everything concerning the management by the Office-bearers. Any injudicious and frequent interference in the management of the affairs of this long established institution on the part of the authorities would introduce deadlock and frustration and dampen the enthusiasm of the members of the Sourastra Sabha. In course of time, they would become indifferent and voluntary donations and contributions would also disappear. This would naturally adversely affect the proper maintenance and upkeep of the temple, the worship and the celebration of the usual festivals. The less the interference by the authorities, the better will be the promotion of the good interests and the objects of the Institution.

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The authorities should also bear in mind that the temple accounts have been regularly maintained by the Devasthanam Committee of the Sourashtra Sabha and also periodically audited under the provisions of the Indian Companies Act, and till now nothing adverse has been suggested. It may be that the authorities functioning under the Hindu Religious and Charitable Endowments Act have a right to audit through their Officers and also demand audit fees; but it is a matter for them to deeply consider if they have such powers, whether such an audit involving expenses to the institution is at all necessary and whether it is going to serve any further or additional purpose besides the audit under the provisions of the Indian Companies Act. So long as the income and the expenditure are properly accounted for, there may be absolutely no need for a double audit."

After finding so, the Division Bench allowed the appeal and set aside the Judgment and decree of the trial court and declared that the Temple is a denominational temple within the meaning of Article 26 of the Constitution of India. The Court also set aside the order of the Commissioner passed in A.P. No.46 of 1961 and observed that the parties would be regulated by the Madras Hindu Religious and Charitable Endowments Act insofar as it is applicable to the denominational Temples.

9. Relying on the above mentioned observation/direction that the plaintiff/Temple would be regulated by HR&CE Act, the respondents would argue that they are fully justified in issuing the impugned notice, calling upon the petitioner Sabha for production of the accounts and records for auditing.

10. In this regard, it is useful to refer to the relevant constitutional and statutory provisions.

(A) Article 26 of the Constitution of India reads as follows:-

" 26. Freedom to manage religious affairs. -- Subject to public order, morality and health, every religious denomination or any section thereof shall have the right--

(a) to establish and maintain institutions for religious and charitable purposes;

(b) to manage its own affairs in matters of religion;

(c) to own and acquire movable and immovable property; and

(d) to administer such property in accordance with law. "

(B) Section 107 of the Tamil Nadu Hindu Religious and Charitable

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Endowments Act runs as under:-

> " 107. Act not to affect rights under Article 26 of the Constitution.-- Nothing contained in this Act shall, save as otherwise provided in section 106 and in clause (2) of Article 25 of the Constitution, be deemed to confer any power or impose any duty in contravention of the rights conferred on any religious denomination or any section thereof by Article 26 of the Constitution. "

On considering together the constitutional provision viz., Article 26, Section 107 of the Act and the Division Bench decision of this Court in the Appeal Suit, wherein the petitioner herein was the appellant, we find that the Sabha is a religious denomination and the Temple is a denominational Temple governed by Article 26 (a) & (b) of the Constitution of India. Though the authorities under the Act are empowered to go into the affairs of the Temple particularly with regard to maintenance of accounts, we are of the view that, in the case of a denominational Temple, it is not automatic or a regular feature for the authorities to interfere or verify the accounts whenever they desire so, under the guise of exercising the superintending power. In other words, the HR&CE authorities, before proceeding to act in terms of the powers vested in them, should deeply consider as to whether auditing is warranted based on the complaints or allegations such as mismanagement etc. As observed by the Division Bench, so long as the income and expenditure are properly accounted for, there is no need for the HR&CE Department to call for the records or interfere with their accounts. It is made clear that if there is a specific complaint/allegation, undoubtedly, the authorities can summon all the relevant records for their verification.

11. In this background, it is relevant to point out that, in the first notice, dated 23.08.1993, the Deputy Commissioner merely directed the petitioner Sabha to produce the entire records in respect of the affairs of the Temple. Even after the reply dated 06.09.1993, the Deputy Commissioner, in his letter dated 13.09.1993 (which is impugned), by referring the Division Bench decision in A.S. No.645/63 dated 31.07.1970, directed the Sabha to produce the entire accounts/records relating to the Management of the Temple. Both the notices dated 23.08.1993 and 13.09.1993 do not refer to a single complaint or allegation except pointing out the judgment of the Division Bench of this Court. No doubt, in the counter affidavit filed before the learned single Judge, the Deputy Secretary to Government, Commercial Taxes and Religious Endowments Department, stated that certain allegations in the form of petitions from public and also from the Secretary, Hindu Temple Protection Committee, Madurai, dated 03.10.1988, were received by the HR&CE Department regarding mal-administration of the temple which necessitated them to issue notice for production of accounts for auditing and verification. As said earlier, absolutely there is no reference to any of the petitions/complaints in both the notices issued by the authority. In such

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circumstances, in view of the legal provisions mentioned above and the decision of the Division Bench, we are of the view that the Deputy Commissioner or any other authority in the HR&CE Department is not automatically permitted to call for the entire records/accounts as if dealing with a 'Public Temple' directly under the control of the Department. We once again reiterate and clarify that, if there is a specific complaint or allegation, it would be open for the authorities to summon the required accounts for auditing and verification. These relevant aspects have not been considered by the learned Judge while dismissing the Writ Petition filed by the petitioner. Before concluding, we make it clear that there cannot be a blanket mandamus, forbearing the authorities of the HR&CE Department from interfering with the affairs of the Temple, as claimed by the petitioner.

In the light of the above discussion and conclusion, the order of the learned single Judge dated 28.11.2000 made in W.P. No.20762 of 1993 is set aside. The impugned notice of the Deputy Commissioner, HR&CE, Madurai, dated 13.09.1993, is quashed. Writ Appeal is allowed with the above observation. No costs.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

JI.

To

1. The Secretary to Govt.,
   Religious & Charitable Endowments Dept., Madras.

2. The Commissioner, HR & CE (Admn.) Department,
   Madras - 34.

3. The Deputy Commissioner, HR & CE (Admn.), Madurai.

+ 1 CC to the Spl. Government Pleader HR and CE, SR NO 6277

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